

THE HONORABLE KAREN STROMBOM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY MOSER, a single man, and MATTHEW
MOSER, a single man,

Plaintiffs,

vs.

PIERCE COUNTY, a municipal corporation,

Defendants.

NO. C04-5239 KLS

**ORDER RE: PLAINTIFFS' MOTIONS
IN LIMINE**

THIS MATTER having come on regularly before the undersigned Judge of the above-mentioned Court upon Plaintiffs' Motions in Limine, and the Court having reviewed the records and files herein, having considered arguments of counsel made during the pre-trial conference on June 2, 2005, and being fully advised on the premises, it is hereby

ORDERED that the Defendants, their attorneys, and their witnesses shall not directly or indirectly mention, refer to, or attempt to convey to the jury in any manner, any of the facts indicated below without first obtaining the permission of the Court outside the presence and hearing of the jury and further that Defendant's attorneys are instructed to warn and caution

ORDER RE: PLAINTIFFS' MOTIONS IN LIMINE - 1 of 8
(C04-5239 KLS)
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1 their clients and each and every witness to strictly follow any order entered by the Court in
2 connection with the following:

3 A. INADMISSIBLE TESTIMONY REGARDING DEFENDANTS'
4 FINANCIAL CONDITION OR ABILITY TO PAY; ASSERTIONS OF A
5 POVERTY DEFENSE OR ARGUMENTS AS TO THE EFFECT OF
6 JUDGMENT ON INSURANCE RATES OR COMPANIES

7 X GRANTED DENIED RESERVED

8 COMMENTS: The motion is granted insofar as the defendants are not
9 permitted to present evidence or argument regarding the fact that they are a non-profit
10 corporation, insolvent defendants, or budget-strapped government entities for the
11 purpose of implying poverty or an inability to pay a judgment.

12 B. EVIDENCE OR ARGUMENT RELATED TO PREJUDICING TAXPAYERS

13 X GRANTED DENIED RESERVED

14 COMMENTS:

15 C. DEFENSES NOT CONTAINED IN DISCOVERY OR INTERROGATORY
16 RESPONSES

17 GRANTED X DENIED RESERVED

18 COMMENTS: Denied on the basis that the request lacks specificity for
19 purposes of a motion in limine.

20 D COLLATERAL SOURCE

21 X GRANTED DENIED RESERVED

22 COMMENTS: The plaintiffs conceded they were not seeking recovery
23 regarding medical expenses.
24
25
26

E. TAX ON RECOVERY

☒ GRANTED ☐ DENIED ☐ RESERVED

COMMENTS:

F. DEFENDANTS SHOULD BE PRECLUDED FROM CALLING ANY
UNDISCLOSED WITNESSES THAT WERE NOT DEPOSED BY PLAINTIFFS

☒ GRANTED ☐ DENIED ☐ RESERVED

COMMENTS: Granted as to the parties' case in chief; reserved as to rebuttal witnesses.

G. DEFENDANTS SHOULD BE PRECLUDED FROM INTRODUCING
UNDISCLOSED EXPERTS AND OPINIONS AT TRIAL

☒ GRANTED ☐ DENIED ☐ RESERVED

COMMENTS:

H. DEFENDANTS SHOULD BE PRECLUDED FROM OFFERING
UNDISCLOSED TESTIMONY ABOUT MATTHEW'S DAMAGES

☒ GRANTED ☐ DENIED ☐ RESERVED

COMMENTS:

I. DEFENDANTS ARE JUDICIALLY AND COLLATERALLY ESTOPPED
FROM ARGUING THAT MATTHEW HAD CONSENSUAL SEX WITH
NELSON

☐ GRANTED ☐ DENIED ☒ RESERVED

COMMENTS: The court requested a copy of the instructions in the underlying criminal trial as well as verdict form.

1 J. HEARSAY TESTIMONY AND ARGUMENT ABOUT NELSON'S
2 DISPOSITION WHILE IN HIS CELL DURING THE 50 DAYS
3 PRECEDING THE RAPE SHOULD BE EXCLUDED

4 _____ GRANTED X DENIED _____ RESERVED

5 COMMENTS:

6
7 K. EVIDENCE REGARDING NELSON'S POST-RAPE DISPOSITION AND
8 Demeanor SHOULD BE EXCLUDED

9 _____ GRANTED X DENIED _____ RESERVED

10 COMMENTS: This evidence relates to the defendant's response and
11 investigation regarding the allegations made by the plaintiff.

12 L. DEFENDANTS SHOULD BE PRECLUDED FROM INTRODUCING
13 EVIDENCE OR ARGUING THAT PLACING MATTHEW IN A CELL
14 WITH NELSON WAS THE ONLY AVAILABLE HOUSING OPTION AS A
15 RESULT OF JAIL OVER-CROWDING

16 X GRANTED _____ DENIED _____ RESERVED

17 COMMENTS:

18 M. ONLY THE LAY WITNESSES WITH FIRST HAND KNOWLEDGE
19 ABOUT THE RAPE CAN PROVIDE TESTIMONY ABOUT WHAT
20 HAPPENED

21 X GRANTED _____ DENIED _____ RESERVED

22 COMMENTS: This motion is granted only as to that portion of Officer
23 Friermuth's deposition testimony as set forth in the Plaintiffs' Motion in Limine, Dkt.
24 #32.
25
26

1 N. EVIDENCE REGARDING MATTHEW'S JUVENILE CONVICTIONS IS
2 INADMISSIBLE

3 _____ GRANTED _____ DENIED _____ X RESERVED

4 COMMENTS: The court inquired regarding the extent to which the
5 classifications officer considered this information in the classification process.

6 O. EVIDENCE REGARDING A DISMISSED WEAPONS CHARGE OR
7 INTEREST IN GUNS IS INADMISSIBLE

8 _____ GRANTED _____ DENIED _____ RESERVED

9 COMMENTS: This motion was withdrawn by the plaintiffs.

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12 P. EVIDENCE REGARDING MATTHEW'S PREVIOUS SEXUAL
13 ENCOUNTERS OR SEXUAL DISPOSITION

14 _____ X GRANTED _____ DENIED _____ RESERVED

15 COMMENTS: Granted to the extent that there shall be no mention of this
16 made to the jury in opening statements. Counsel are required to bring this matter to
17 the court's attention outside the presence of the jury if counsel wish to present
18 testimony in this regard.

19 Q. UNRELIABLE AND UNVERIFIED REFERENCES TO MATTHEW EVER
20 HAVING "CROSS-DRESSED" SHOULD BE EXCLUDED

21 _____ X GRANTED _____ DENIED _____ RESERVED

22 COMMENTS: See comments for "P" above.

1 R. EVIDENCE REGARDING WHAT WAS FOUND IN MATTHEW'S
2 BACKPACK SHOULD BE EXCLUDED

3 X GRANTED DENIED RESERVED

4 COMMENTS: See comments for "P" above.

5
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7 S. INADMISSIBLE CHARACTER EVIDENCE (as detailed in the motion)
8 SHOULD BE EXCLUDED

9 X GRANTED DENIED RESERVED

10 COMMENTS: See comments for "P" above.

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12 T. EVIDENCE REGARDING GARY MOSER'S DRIVING OFFENSES
13 SHOULD BE EXCLUDED

14 X GRANTED DENIED RESERVED

15 COMMENTS:

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17 U. ANY ARGUMENT OR EVIDENCE RELATED TO AN 8 YEAR OLD
18 PHYSICAL ENCOUNTER BETWEEN MATTHEW AND GARY MOSER
19 SHOULD BE EXCLUDED AS BEING UNFAIRLY PREJUDICIAL

20 X GRANTED DENIED RESERVED

21 COMMENTS: See comments to "P" above.

22
23 V. ANY ARGUMENT OR EVIDENCE RELATED TO MATTHEW WAITING
24 OUTSIDE WHILE GARY MOSER HAD A DRINK IN A BAR FROM
25 OVER 10 YEARS AGO SHOULD BE EXCLUDED

26 X GRANTED DENIED RESERVED

COMMENTS: See comments to "P" above.

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3 W. ANY SUGGESTION THAT MATTHEW EXPERIMENTED WITH
4 MARIJUANA AND/OR ALCOHOL SHOULD BE EXCLUDED BECAUSE
IT IS UNFAIRLY PREJUDICIAL

5 X GRANTED DENIED RESERVED

6 COMMENTS: See comments to "P" above.
7

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9 X. EMPLOYMENT OF PLAINTIFFS' COUNSEL

10 X GRANTED DENIED RESERVED

11 COMMENTS:
12

13 Y. EXCLUSION OF WITNESSES PRIOR TO TESTIFYING

14 X GRANTED DENIED RESERVED

15 COMMENTS: The County may have a representative present on its behalf
16 during the trial. That person has been tentatively identified as Eileen Bisson.
17

18 Z. FILING OF THESE MOTIONS IN LIMINE

19 X GRANTED DENIED RESERVED

20 COMMENTS:
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22 The defendant Pierce County filed two motions in limine which were included
23 in their written response (Dkt. #40). The court rules as follows with regard to the two
24 motions:
25
26

1 1. EVIDENCE REFERRED TO IN A MEMO DATED FEBRUARY 18, 2003
2 AND THE MEMO ITSELF.

3 The court grants the motion to the extent that the memo itself is not admissible into
4 evidence. The court further grants the motion to the extent that the memo included remedial
5 measures. The plaintiff believes that the paragraph on page two which starts with “After
6 reviewing all materials...” is an admission. The court directed additional briefing in that
7 regard due on Wednesday, June 8, 2005.
8

9 2. EXCLUDE ANY E-MAIL COMMUNICATIONS BETWEEN OFFICER
10 FRIERMUTH AND EILEEN BISSON RELATED TO THIS INVESTIGATION.

11 The court reserves ruling on this motion.

12 Dated this 9th day of June, 2005.
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14 Karen L. Strombom
15 THE HONORABLE KAREN STROMBOM
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